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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MANUEL MERCADO,

Defendant and Appellant.

E062979

(Super.Ct.No. INF10002324)

OPINION

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Jose Mercado is serving 60 years to life in prison after a jury convicted him of committing multiple sex acts against one child and a single sex act against a second child. We affirm the judgment.

## **FACTS AND PROCEDURE**

In 2003 and 2004, defendant sexually molested Mary Doe, who was between eight and nine years old at the time. Defendant's wife provided child care for a number of children, including Mary Doe's younger sister and Mary Doe after school. They all lived in the same apartment complex, which Mary Doe's mother managed, and for which her father provided maintenance. These incidents took place later in the day, two or three times a week when defendant's wife would leave to go shopping and there would be just Mary Doe and her sister and defendant in the apartment. Defendant would drag Mary Doe out of the living room into a bedroom, put on a pornographic movie from his collection and force Mary Doe to recreate the sex acts. Mary Doe stated that several times she saw defendant getting the videos out of a closet in the hallway and that they were hidden in the very back of the closet. Defendant would stop when he heard Mary Doe's father knocking on the front door to pick up his daughters, but he would tell her not to tell anyone or something bad would happen. Mary Doe's sister testified that on multiple occasions she remembered defendant dragging Mary Doe out of the living room by her feet and that she could hear Mary Doe screaming behind a locked bedroom door. When Mary Doe would come out of the room her hair would be messed up and she would be crying. She told the sister not to tell anyone or defendant would hurt their family. Defendant's brother, who was the assistant manager at the car wash where defendant worked and brought with him defendant's time sheets from the years 2003 and 2004, testified that defendant normally worked Monday through Friday from 8:00 a.m. to 5:00 p.m. during that time. However, on cross-examination, he eventually admitted that

defendant did not work most Mondays from December 2003 through December 2004. The last incident happened behind the apartment complex one evening after dark. Mary Doe walked past defendant's car in the parking lot. Defendant was drunk. Defendant grabbed Mary Doe, took her to some bushes behind the complex, and raped her. In about May of 2010, after suffering from depression and a suicide attempt, Mary Doe told her mother about the abuse. Her mother contacted police, who initiated an investigation. Police arrested defendant on October 25, 2010 after serving a search warrant at his home and finding pornographic DVDs in a bag in the hall closet as Mary Doe had described.

In 2010, Jane Doe was eight years old. She lived in the same apartment complex as defendant and his wife. Defendant's wife babysat her. One day, at defendant's suggestion, Jane Doe went with defendant's family to a baby shower. During the baby shower, defendant asked Jane Doe to go with him to get gas. Defendant parked his car at an apartment complex, got into the back seat with Jane Doe, and touched her inappropriately. Then he took her back to the baby shower and told her not to tell anyone or he would hurt her parents. After Jane Doe's mother heard about defendant's arrest, she asked Jane Doe whether defendant had ever touched her. Jane Doe eventually told her mother what had happened. Her mother immediately contacted police. Jane Doe's mother testified at trial that defendant became "very consistent" after the baby shower, coming over "many times" and "want[ing] to take her out of the house," but she would not let him.

After defendant's arrest on October 25, 2010, Police Detective Villegas interviewed defendant in Spanish and advised him of his rights under *Miranda v. Arizona*

(1966) 384 U.S. 436 (*Miranda*). After some initial hesitation and questions, defendant stated he understood his rights and agreed to speak with the detective about Mary Doe's allegations. During that first interview, defendant denied molesting Mary Doe at all. On October 26, 2010, defendant was apparently initially interviewed by a polygraph technician, but without being hooked up to the polygraph machine. Detective Villegas then took over and continued the interview with defendant after reading him his *Miranda* rights. Defendant stated he understood his rights and agreed to resume the interview. Defendant told the detective that he and Mary Doe had oral sex, but that she both consented to and initiated it. Defendant denied having intercourse with Mary Doe.

The People filed the initial complaint on October 27, 2010, and an amended complaint on January 7, 2011. The preliminary hearing was held on August 17, 2011, at the conclusion of which the trial court held defendant to answer.

On December 23, 2014, defendant filed a motion to suppress his confession, contained in the second interview of October 26, 2010. The People filed its opposition on December 30, 2014. Defendant argued that his questions regarding the right to counsel in the first interview of October 25, 2010, were in fact an invocation of the right to counsel, that the interrogation should have ended at that point, thus the second interview of October 26, 2010, was also tainted and should be excluded. Defendant argued regarding the first interview that the police detective misrepresented to defendant that his right to counsel began only once court proceedings began. On January 12, 2015, the trial court heard and denied the motion, based on defendant's failure to clearly and unambiguously ask for an attorney.

On January 14, 2015, the People filed a second amended information charging defendant in counts 1, 3 and 5 with aggravated sexual assault of a child (Pen. Code, § 269)<sup>1</sup> and in counts 2, 4, 6 and 7 with lewd or lascivious acts on a child (§ 288). The People also alleged defendant committed the offenses against more than one victim (§ 667.61, subd (e)(5)). On January 22, 2015, the jury convicted defendant of all counts and found true the multiple victim allegation.

On February 20, 2015, the trial court sentenced defendant to 60 years to life as follows: consecutive terms of 15 years to life for counts 1, 3, 5 and 7 and 15 years to life for counts 2, 4 and 6, stayed pursuant to section 654.

Defendant appealed, specifying the bases as “lack of corroborating evidence” and “after denial of suppression motion.”

### **DISCUSSION**

After defendant appealed, upon his request, this court appointed counsel to represent him on appeal. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case, a summary of the facts and potential arguable issues, and requesting this court conduct an independent review of the record.

We offered defendant an opportunity to file a personal supplemental brief, but he has not done so. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we

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<sup>1</sup> All section references are to the Penal Code unless otherwise indicated.

have independently reviewed the entire record for potential error and find no arguable error that would result in a disposition more favorable to defendant.

**DISPOSITION**

The judgment is affirmed.

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RAMIREZ  
P. J.

We concur:

MILLER  
J.

CODRINGTON  
J.